IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4679 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GHANCHI ALI MOHMAD RASULBHAI

Versus

PATEL MANILAL JIVIDAS

Appearance:

1. Criminal Misc.Application No. 4679 of 1995

NOTICE SERVED for Petitioner No. 1

MR NC NAYAK for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

MR VM PANCHOLI, ADDL.PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2002

ORAL JUDGEMENT

#. Mr.N.N.Prajapati appears for Mr.N.C.Nayak for respondent No.1. The original complainant before the

trial Court petitioner is absent. Mr.V.M. Pancholi, learned APP appears for the State of Gujarat - respondent No.2.

#. Learned advocate Mr.N.N.Prajapati, for Mr.N.C.Nayak for contesting respondent submits a letter seems to have been addressed to Mr.N.C.Nayak by the contesting respondent saying that the matter in question has been settled and the original complaint is not required to be conducted before the trial Court, he has therefore instructed learned advocate for the respondent No.1 accordingly. The said letter is taken on record.

#. On going through the records and papers, it appears that the complaint has been filed for an offence punishable under Section 406 and 420 of the I.P.C. as well as under Section 138 of the Negotiable Instruments Act, 1881.

#. Looking to the averments made in the FIR and looking to the records of the case, it appears that the offence punishable under Section 406 of the I.P.C. will not stand and the offence punishable under Section 420 of the I.P.C. is compoundable with the permission of the Court under Section 320 of the Criminal Procedure Code. The offence punishable under Section 138 of the Negotiable Instruments Act, 1881 is a private summons triable Criminal Case which is withdrawable at the instance of the original complainant.

#. In above view of the matter, with the consent of the respondent No.1 and after hearing the learned APP Mr.V.M.Pancholi, Criminal Case No.1009/1995 pending before the learned Judicial Magistrate First Class, Kadi in Mehsana District is ordered to be quashed. Rule made absolute.

kks (D. P. BUCH, J.)